

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 rvannest@kvn.com
BRIAN L. FERRALL - # 160847
3 bferrall@kvn.com
DAVID SILBERT - # 173128
4 dsilbert@kvn.com
DAVID J. ROSEN - # 296139
5 drosen@kvn.com
6 633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
7 Facsimile: 415 397 7188

8 Attorneys for Defendant ARISTA NETWORKS, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 CISCO SYSTEMS, INC.,

13 Plaintiff,

14 v.

15 ARISTA NETWORKS, INC.,

16 Defendant.

Case No. 5:14-cv-05344-BLF (PSG)

**NOTICE OF SUPPLEMENTAL INTRINSIC
EVIDENCE RE CLAIM CONSTRUCTION**

Tech Tutorial: March 11, 2016

Claim Construction Hearing: March 18, 2016

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 By this Notice, Arista submits two pieces of intrinsic evidence relevant to the construction
2 of the patents in suit that did not exist when the parties filed their claim-construction briefs.

3 On February 18, 2016, Cisco filed a Patent Owner Preliminary Response in response to
4 Arista's Petition for Inter Partes Review of U.S. Patent No. 7,047,526. *Arista Networks, Inc.,*
5 *Petitioner v. Cisco Systems, Inc., Patent Owner Preliminary Response*, Case IPR2016-00119.
6 On March 3, 2016, Cisco filed a Patent Owner Preliminary Response in response to Arista's
7 Petition for Inter Partes Review of U.S. Patent No. 7,953,886. *Arista Networks, Inc., Petitioner v.*
8 *Cisco Systems, Inc., Patent Owner Preliminary Response*, Case IPR2016-00244. Cisco's
9 Responses are attached hereto as Exhibits 1 and 2, respectively.

10 Cisco's Patent Owner Preliminary Responses, which did not exist when the parties
11 completed their claim construction briefing, are part of the prosecution history for the '526 and
12 '886 patents. *See Evolutionary Intelligence, LLC v. Sprint Nextel Corp.*, No. C-13-03587-RMW,
13 2014 WL 4802426, at *4 (N.D. Cal. Sept. 26, 2014) ("The IPR proceedings will also add to the
14 '536 Patent's prosecution history. Prosecution history is an important part of the intrinsic record
15 relevant to claim construction"); *Pragmatus AV, LLC v. Yahoo! Inc.*, No. C-13-1176-EMC, 2014
16 WL 1922081, at *5 (N.D. Cal. May 13, 2014). ("Under Federal Circuit law, comments made by a
17 patent holder during inter partes reexamination proceedings can limit claim scope. The same
18 should be true now that inter partes review, rather than inter partes reexamination, is in effect.").

19 Arista respectfully submits that Cisco's Patent Owner Preliminary Responses should be
20 considered along with the intrinsic evidence already submitted in this case.

21
22 Dated: March 9, 2016

KEKER & VAN NEST LLP

23
24 By: /s/ David J. Rosen

ROBERT A. VAN NEST
BRIAN L. FERRALL
DAVID SILBERT
DAVID J. ROSEN

25
26
27 Attorneys for Defendant ARISTA
28 NETWORKS, INC.